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10/757,232	01/14/2004	Evan Kirshenbaum	200401797-1	3264

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P. O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

WACHSMAN, HAL D

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,232

Applicant(s)

KIRSHENBAUM ET AL.

Examiner

Hal D. Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,14,15,18,20-22,24,25 and 27-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-5,7-10,20,27-30,33 and 34 is/are allowed.
- 6) ☒ Claim(s) 6,11,14,15,18,21,22,24,25,31 and 32 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

1. The amendment in the reply filed 3-20-06 to the section on page 1 of the specification, now being numbered as paragraph 0000, leaves the text above this section (i.e. "(1) TITLE....(2) CROSS-REFERENCE TO RELATED APPLICATIONS" and the text that comes after this section (i.e. "(5) BACKGROUND (5.1) FIELD") without being part of a numbered paragraph of the specification. Appropriate correction is required.
2. The amended Abstract in the reply filed 3-20-06 was substantially rewritten (original abstract text entirely deleted) however a new abstract in clean text (no markings) on a separate sheet (37 C.F.R. 1.72) accompanied by an instruction for the cancellation of the previous abstract was not submitted. Appropriate correction is required.
3. Claims 1, 3-5, 7-10, 20, 22, 24, 25, 27-30 and 33-35 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, lines 7-8, cite "said data associated with at least one characteristic" which it appears should be "said data associated with said at least one characteristic". Claim 7, line 10, cites "the measured parameterss" which it appears should be "the measured parameters". The preambles of claims 8-10 cite "The system..." however the antecedent basis is "monitoring system". The preamble of claim 20 cites "Apparatus for ..." however was this intended to be "An apparatus for..." ? Claim 22, lines 9, 10 and 13, cite "the critical date" however the antecedent basis is "dynamic critical date". Claim 24, line 3, cites "the data processing device" however the antecedent basis is "at least one data processing device". Claim

24, line 4, cites "the monitoring device" however the antecedent basis is "at least one monitoring device". Claim 25, line 8, cites "the critical date" however the antecedent basis is "at least one critical date". The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 25 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 25 is non-statutory under 35 U.S.C. 101 because the method claim lacks a practical application in that the claimed invention does not transform an article or physical object to a different state or thing (note: transformation of data is not "physical transformation") and there is not a useful, concrete and tangible result. The result in claim 25 is "substantially continuously displaying said at least one critical date" however a date is not tangible and it is not clear in the claim that the usefulness of knowing this date is being realized and that such information represents a specific, substantial and credible utility.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 6, 11, 15, 18, 21, 22, 24, 25, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al. (5,798,694) in view of Lindsay et al. (US 2004/0100380 A1).

As per claim 6, Reber et al. (Abstract, col. 2 lines 14-26, col. 3 lines 46-49, col. 4 lines 15-19, 35-45) disclose "a containment for a product having viability factors". Reber et al. (see at least abstract) disclose "affixed to said containment, a product viability-related conditions monitoring device". Reber et al. (Abstract, figures 5, 6)

disclose an analysis device for receiving, for storing, and for analyzing measurement data from the monitoring device and for generating data representative of a current condition of the product relating to one of the viability factors of the product stored within the containment but does not clearly disclose also the predicted date relating to one of the viability factors of the product. Reber et al. (figure 5, col. 3 lines 44-67, col. 4 lines 1-4) disclose a display to display the data representative of the current condition relating to the one viability factor but does not clearly disclose the display of the predicted date relating to the one viability factor. However, with respect to the predicted date relating to one of the viability factors of the product and the display of the predicted date relating to the one viability factor, Lindsay et al. (Abstract, paragraphs 0009, 0010, 0013, 0024) teach these excepted features. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

As per claim 11, Reber et al. (Abstract, figures 2-4) disclose "associated with the product, means for obtaining measurements pertinent to viability". Reber et al. (figures 3, 4) disclose associated with the means for obtaining measurements pertinent to viability, a means for calculating at least one time-related characteristic for the product but does not clearly disclose that the at least one time-related characteristic comprises at least one of a maturity date and an expiration date. Reber et al. (figures 2, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11) disclose associated with the means for

calculating a means for displaying but does not clearly disclose the displaying of at least one of the maturity date and expiration date. However, Lindsay et al. (Abstract, figure 2, paragraphs 0009, 0010, 0013, 0053, 0062) teach the excepted features noted above. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

As per claim 15, Reber et al. (col. 4 lines 52-64) disclose the feature of this claim.

As per claim 18, Reber et al. (figures 3, 4, 10) disclose the feature of this claim.

As per claim 21, Reber et al. (figures 2, 4, 5, 10) disclose the feature of this claim.

As per claim 22, Reber et al. (Abstract, figures 2, 3, 5, col. 4 lines 33-45) disclose "at least one monitoring device wherein...with maturation and degradation of the product is monitored". Reber et al. (see at least figures 5-7) disclose "at least one storing device wherein data related to said maturation and degradation is stored". Reber et al. (figures 2, 3, 5, 10, col. 3 lines 56-67, col. 4 lines 1-11, col. 11 lines 52, 53, col. 12 lines 28-30) disclose associated with the at least one monitoring device and at least one storing device, at least one data processing device to analyze data related to maturation and degradation but does not clearly disclose the adjusting of the critical date according to data relating to maturation and degradation in which the critical date comprises at

least one of a maturity date and an expiration date. Reber et al. (figure 5, col. 3 lines 44-67, col. 4 lines 1-4) disclose associated with the at least one data processing device at least one displaying device but does not disclose the displaying of the critical date. However, Lindsay et al. (Abstract, paragraphs 0010, 0056, 0062, page 7, claims 1, 13 and 14) teach the excepted features noted above. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

As per claim 24, Reber et al. (Abstract, figures 2, 3, 5, 6) disclose the feature of this claim.

As per claim 25, Reber et al. (Abstract, figures 3, 4, 10) disclose "storing a time-based history of environmental data and handling data of the item" and "substantially continuously compiling the time-based history". Reber et al. (figures 2-4, col. 4 lines 52-64) disclose based on the time-based history and at least one rule associated with viability of the item, substantially continuously calculating the viability but does not clearly disclose the critical date associated with the viability the critical date comprising at least one of a maturity date and an expiration date and substantially continuously displaying the at least one critical date. However, Lindsay et al. (Abstract, paragraphs 0010, 0056, 0062, page 7, claims 1, 13 and 14) teach the excepted features noted above. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of



Art Unit: 2857

Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

As per claim 31, Lindsay et al. (see at least Abstract and figure 2) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because it would provide the user the flexibility to display the type of data desired.

As per claim 32, Lindsay et al. (see at least abstract) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Lindsay et al. to the invention of Reber et al. as specified above because as taught by Lindsay et al. (Abstract) food products may typically have an expiration date or a date when they are no longer fresh.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al. (5,798,694) in view of Lindsay et al. (US 2004/0100380 A1) as applied to claim 11 above, and further in view of Starling et al. (US 2002/0161545 A1).

As per claim 14, Starling et al. (Abstract, figure 2, paragraphs 0048, 0049) teach the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Starling et al. to the inventions of Reber et al. and Lindsay et al. as specified above because as taught by Starling et al. (paragraph 0049) it would enable a particular store's food safety and quality management performance to be compared with other stores within the chain or

with industry as a whole, to determine how that particular store is performing and whether actions to improve performance are required.

9. Claims 1, 3-5, 7-10, 20, 27-30, 33 and 34 are allowed subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted in paragraph 3 above.

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted in paragraph 3 above.


10. Applicant's arguments filed 3-20-06 have been fully considered but they are not persuasive with respect to the claims rejected above. As a result of further review and the current Office policy with respect to 35 U.S.C. 101, a new grounds of rejection under 35 U.S.C. 101 has been made in paragraphs 4 and 5 above. With respect to the arguments concerning claim 6 on page 18 of the reply, claim 6 is of different scope compared to claim 1 and arguments were presented for this claim with respect to the Reber et al. reference but not with respect to the Lindsay et al. reference. On page 19 of the reply, the Applicant states "Independent claims 11, 22, and 25 are also similarly allowable over Reber" however there are differences between the scope of each of these claims when compared to claim 1 and no separate arguments were provided for each of these independent claims with respect to the prior art of record. In addition, no arguments were made with respect to the Starling et al. reference which was used in the 35 U.S.C. 103 rejection of claim 14.

Art Unit: 2857

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW  
May 22, 2006